

HUMAN SERVICES BOARD

INTRODUCTION

FINIDNGS OF FACT

2. DAIL reviews the number of personal care attendant hours for which a client is eligible on an annual basis. The review is accomplished by having a surveyor interview the client and his or her caretakers with regard to the amount of assistance needed in a number of categories. The interview results in the production of a detailed written needs assessment report which also sets forth the number of hours requested by the client for personal care. That report is reviewed by a Committee within DAIL which is composed of

persons with a variety of disabilities who also use personal care attendants. The Committee deliberates on the report and determines how many hours will actually be awarded to the client. Recently DAIL became concerned that the finite attendant care service hours awarded to clients of the program were not uniform because in the past they had been decided on a case by case basis by various managers and had not been measured against any standard. DAIL felt that the ad hoc nature of the awards had often resulted in clients with a similar level of need receiving different levels of personal care support. In order to correct that inequity, DAIL recently began to use a table of standard "times needed" to assist clients with various activities of daily living. The review Committee now uses this standard as a reference point to ascertain the time needed for personal care. The Committee has the power to give more time than the standard if need is shown and conversely to give less time if the need for the full time is shown not to exist.

3. Following an interview with the petitioner and her daughter, a registered nurse surveyor who works for DAIL, completed a fourteen-page written assessment of the daughter's needs on August 11, 2004. In summary, the assessment concluded that the petitioner's daughter, who has

cerebral palsy with spastic quadriplegia, is totally dependent on a caretaker for dressing, bathing, bed mobility, toilet use, transferring, meal preparation, shopping, medication and money management, household maintenance and cleaning, laundry, transportation and equipment (wheelchair) care. Because she has some ability to use her hands, the daughter was found to have extensive, but not total, need for assistance with eating and personal hygiene. The daughter's specific activities in each category were thoroughly detailed including the petitioner's time estimate for each activity. The total weekly hours requested were 68.97 or 9.85 per day.

4. The times requested by the petitioner for each activity were entered on a "Personal Care Worksheet" which contained a table of maximum standard times dependent upon severity and frequency of need.

5. The assessment and the worksheet were provided to the Committee for review. The Committee, after deliberation, determined on August 17, 2004 that the petitioner's daughter should be awarded eight hours per day or fifty-six hours per week of attendant care services.

6. On September 30, 2005 the Commissioner notified the petitioner and her daughter that her daily hours would be cut from ten to eight based on the latest assessment.

7. The petitioner protested that cut from ten to eight hours saying that her daughter's situation had not improved.

8. The petitioner responded to DAIL's award in a long, detailed letter dated October 19, 2004 which was made part of the record to show information which was provided to DAIL by the petitioner. Much of the detail is a description of the general needs of an immobile person who is totally dependent upon others for care, a fact which was already accepted by DAIL in its assessment. Pertinent allegations in the letter which were not in the original assessment and for which she did not receive the maximum allotments are as follows:

Transportation - An exhaustive list of social service and medical appointments as well as social trips, civic and medical appointments in support of a request for 52 minutes per week for transportation.

Medication Management - An allegation that the daughter has severe choking and a gag reflex which results in at least five minutes four times per day to administer medication.

Bathing - A detailed explanation of her daughter's bathing schedule showing that she has full showers three times per week and full bed baths four times a week in addition to after meal washing and skin care.

Bed mobility - A statement that the daughter needs total assistance with bed positioning from 2-3 times per day and sometimes more frequently.

Mobility - A statement that the daughter needs frequent repositioning in her wheelchair due to spasticity and skin integrity problems and a total need for assistance in pushing her manual wheelchair through the home. The

family asked for 50 minutes the year before but was only granted 40.

9. Minutes from the meeting of the reassessment

Committee show that the petitioner's daughter was awarded the number of care hours as follows:

- (a) The number of hours requested were granted in full for toilet use, transferring, shopping, housekeeping, laundry, money management, and meal preparation. The figures requested for those activities either matched the standardized maximum or were increased due to special circumstances presented by the petitioner.
- (b) The daughter was granted in excess of the maximum standard hours but less than she requested for dressing, personal hygiene, home maintenance, and care of adaptive equipment and mobility (ambulation). Ten minutes were added to the daily standard for dressing (30 mins) due to the daughter's severe spasticity. (The request was for 50 mins.) Thirty-five minutes per day were added to the daily standard for personal hygiene (15 mins) due to the daughter's need to care for her longer hair. (The request was for 75 minutes.) Thirty minutes were added to the weekly home maintenance standard (60 mins) because the six person family with which the daughter lives heats with wood. (The request was for 120 minutes). The daughter's 105 minute per week request for care of adaptive equipment included van servicing which was excluded as a non-covered care area. The committee gave the daughter 10 minutes per day which it said it gave all persons with her type of wheelchair. This amount is in excess of the three to four minutes per day as the standard maximum. The mobility grant (essentially someone to push her wheelchair) was kept at forty minutes per day based on her prior year's request because the daughter did not show an increased need in this area which would warrant granting her request of fifty minutes per day. (The standard is 30 to 45 minutes.)

- (c) The daughter was granted the standard hourly amount but less than she requested (45 minutes) for eating assistance. The Committee noted that the petitioner had asked for and received the standard amount for eating the year before (30 minutes per day) and had not documented a need for more assistance.
- (d) The daughter was granted less than the standard maximum hourly amount for medication management, bathing, bed mobility and transportation. With regard to medication management, the committee noted that the number of medications used by the daughter had decreased dramatically since her last assessment. The committee multiplied the number of medications by one minute per day each and arrived at ten minutes per day for her award. (Fifteen minutes is maximum, twenty-four minutes were requested.) With regard to bathing, the Committee used the daughter's own bathing figures minus time needed for shampooing which was transferred to the personal hygiene category. The result was forty minutes per day, five minutes less than the maximum standard but fifteen minutes less than the time requested. The petitioner was given ten minutes per day instead of the maximum twenty minutes for bed mobility based on her previous award of ten minutes per day. Although the petitioner requested fifteen minutes per day, there was no documentation that there had been a change in circumstances requiring more assistance than the year before. Transportation was also awarded at 32 minutes per week (60 possible) based on an award made the previous year although the petitioner had requested 52 minutes.

11. The resassessment did not change the number of hours awarded for care and the petitioner asked the Commissioner to review the Committee's assessment. The Commissioner held a review hearing with the petitioner by

telephone and on September 30, 2004 issued a decision upholding the Committee's decision.

12. The petitioner appealed DAIL's decision to the Human Services Board. At a meeting of all the parties, the petitioner was informed by the Hearing Officer that under a prior decision of the Board, she was required to present medical evidence of any special circumstance she claimed in order to exceed the maximum number of standard hours for any daily living activity. The matter was adjourned for the petitioner to obtain this evidence.

13. The petitioner did not present such evidence. The parties agreed to the submission of the assessments, committee meeting minutes, Commissioner's review and letters provided by the petitioner to DCF as the record in this matter.

ORDER

The matter is remanded to DAIL to consider evidence of actual need for services for mobility, bed mobility, and transportation categories in which the petitioner was found to have less than the standard need for her category. The

decision of DAIL with respect to the other categories is upheld.¹

REASONS

The petitioner's daughter is virtually totally dependent on others to perform any and all activities needed in daily living. The only activity she can do on her own is some right hand grasping. The standard guideline used by DAIL increases the number of hours available for personal needs care as the client's level of severity increases. The petitioner's daughter is at the high end of need on that scale. The petitioner has plead the petitioner's total helplessness and many needs as reason to continue her on a ten hour per day award. There is no doubt that the petitioner could use every moment of attendant care that she can get paid for to care for her daughter.

By its own admission, the DAIL personal care program cannot pay for every need of every client. It is in the position of parceling out scarce resources in an equitable manner to make sure that those who are most in need get the most services. In the categories is has established (with

¹ The parties agreed that as the petitioner has received the higher level of benefits pending appeal and as her yearly assessment is due next month, the case will probably became moot in the very near future. Therefore, neither party contested the recommendation.

the help of many disabled persons including those with quadriplegia) the standards obviously reflect not only the ordinary time it takes to perform certain tasks for a totally dependent person but also the special problems that commonly arise when trying to perform those tasks. Thus, showers are deemed to take thirty minutes for those who are totally dependent not because it takes thirty minutes for one person to wash another but because it takes thirty minutes for a person to wash another person who cannot get into a regular shower by herself. Similarly, it should not take thirty minutes per day for one person to dress and undress another, but it may take thirty minutes to dress a person whose physical condition makes bending and flexing difficult.

The petitioner has reported in detail to DAIL the considerable difficulties she has encountered in caring for her daughter. While these difficulties are lamentable, they are for the most part common to persons in this situation and have already been taken into consideration in setting the standard number of hours needed for personal care. The Board has held in several prior consolidated cases that a person challenging decisions of DAIL denying awards in excess of the guidelines must present medical evidence that his or her situation has some unique aspect in order to get additional

time. See Fair Hearing No. 18,289.² The petitioner has not presented such evidence and as such cannot prevail on those requests.

Just as the applicant is required to show extraordinary needs if she wishes to challenge the use of standard amounts, DAIL cannot presume that less than the standard amount is needed just because it awarded that amount in the past under a different system.³ As DAIL has chosen to assess its awards under a new rating system, it must truly review all the conditions claimed, not just those that it judges to be excessive. It is quite possible that some of the need for care services may have been underrated as well as overrated under the past system. In addition, as the petitioner points out, many of those awards were much less than amounts she had actually requested.

Now that DAIL has adopted uniform standards, it is incumbent upon DAIL to consider whether the client has the standard need for a person in her situation or needs something less. If it is found that something less is

² The petitioner is encouraged to read that decision which contains a thorough explanation by DAIL as to the changes in this program and a complete analysis as to their legality. A copy can be obtained by requesting one from the Board clerk.

³ Of course if a decision had been made in the past using the same system, DAIL could presume that the amount remained the same absent a showing of a change.

needed, DAIL needs to say why the need is less than others in the same situation or why that need is being met in some other way. In the area of mobility, bed mobility, and transportation, DAIL's award of time was not related to the current assessment of the petitioner's needs as they relate to the new standards. Its decision in these areas is arbitrary and must be reconsidered.

In at least two instances, DAIL made awards of less than the standard that were explained in its decision. The petitioner was granted bathing time based on the combination of shower and bed baths she took per week added to a standard daily washing component. She was also awarded medication management time based on a one minute per medication formula. The one minute used appears to account for the fact that medications cannot be absorbed instantaneously and may require some extra time to administer. Again, if the petitioner feels that her situation is extraordinary among persons in her situation, she can provide DAIL medical evidence to obtain an increase in the number of minutes allotted.

The rest of the allotments to the petitioner were either the maximum recommended or were less than the maximum but were explained in the decision. As such, it cannot be said

that any of those decisions were arbitrary or an abuse of DAIL's discretion in assessing and awarding personal care hours and must be upheld.

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